

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PATRICK MCGUFFIN and CATHY REBECCA  
MCGUFFIN,

UNPUBLISHED  
October 7, 2003

Plaintiffs-Appellants,

v

LAURA STURDEVANT and KIMBALL  
TOWNSHIP,

No. 240661  
St. Clair Circuit Court  
LC No. 01-003442-CZ

Defendants-Appellees.

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Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Plaintiff<sup>1</sup> appeals as of right the trial court's grant of defendants'<sup>2</sup> summary disposition motion under MCR 2.116 (C)(7) and (C)(10). After agreeing to leave his post as fire chief and executing a document entitled "Retirement and Release Agreement" that included a severance package and release, plaintiff brought this action against defendants. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and 2.116(C)(10). We affirm.

Plaintiff was the Kimball Township Fire Chief from May 1972 until March 5, 2001. He asserts that from approximately April 1999 through October 2000, he engaged in a consensual sexual relationship with defendant Laura Sturdevant, the Kimball Township supervisor. As a result of a public controversy, plaintiff negotiated an Agreement with Kimball Township and resigned from his position as fire chief on March 1, 2001.

The agreement provided that plaintiff "acknowledges and confirms that he has given notice to the Township that he is retiring his position with the Township effective March 5, 2001." Plaintiff's severance package included provisions for payment of his salary and health

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<sup>1</sup> All references to "plaintiff" will refer to Patrick McGuffin because Cathy Rebecca McGuffin's claim is a derivative claim, and plaintiff is not appealing its dismissal.

<sup>2</sup> All references to the singular "defendant" refer to Laura Sturdevant.

insurance coverage for a specified period, and reimbursement of penalties resulting from the early withdraw of his pension funds. In exchange, plaintiff was to remain available temporarily for the training of the new fire chief.

On June 8, 2001, defendants filed a claim in small claims court alleging plaintiff made unauthorized purchases of dress clothing. On July 13, 2001, the claim was dismissed pursuant to a stipulation by both parties. On December 9, 2001, plaintiff filed a complaint claiming that defendants' small claims action was a breach of the agreement and allowed him to seek redress of certain claims. Plaintiff alleged that as a result of his ending the affair with defendant Sturdevant, she began harassing him to the extent that her actions created a hostile work environment. Plaintiff also alleged that the harassment eventually culminated in defendant's threat to plaintiff that he either retire or he would be fired. Accepting what he claims was the inevitable, plaintiff asserted that he resigned under duress. Plaintiff claimed the harassment did not stop with his resignation and that it continued through his filing of the complaint. Plaintiff joined defendant Kimball Township in this case under the theory of respondeat superior. Plaintiff's wife alleged loss of consortium as a result of defendant's actions.

Defendants moved for summary disposition on three theories: (1) that plaintiff's claims are barred by the agreement under MCR 2.116(C)(7); (2) that plaintiff's claim for breach of contract must fail because all money due was paid, and, in any event, the claim is barred by plaintiff's failure to pay back the severance package monies he received, and; (3) that plaintiff's claim of malicious prosecution should be dismissed based on governmental immunity under MCR 2.116(C)(7) or alternatively, failure to state a claim under MCR 2.116(C)(10). The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) (barred by release) and MCR 2.116(C)(10) (no genuine issue of material fact). Plaintiff now appeals as of right. We affirm.

Plaintiff first argues the agreement was a mutual release in that defendant also agreed to release plaintiff from any and all claims. The trial court reviewed the agreement and found the release contained in the agreement stated that it was only plaintiff who released defendant from any claims and it was not a mutual release. We agree.

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of a release of the claim before the commencement of the action. Plaintiff bases his argument that the agreement was a mutual contract on the introductory clauses contained in the agreement.<sup>3</sup>

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<sup>3</sup> The introductory portion of the agreement reads:

The Township of Kimball, St. Clair County, Michigan ("Township"), and Patrick McGuffin, Sr. ("Employee"), agree and represent as follows:

WHEREAS, the parties agree and wish to ensure that they have amicably resolved and settled all possible differences, claims or matters pertaining to, arising from, or associated with Employee's employment with the Township and retirement from employment;

(continued...)

But plaintiff ignores the following four pages that set forth with particularity the specific rights of defendant and the obligations of plaintiff and the release of all claims solely by plaintiff. While plaintiff continues to argue that this was a mutual agreement, nowhere within the enumerated rights, obligations, or release does it state that defendant acknowledges or agrees to release plaintiff from any and all claims. Nor does plaintiff point to such a clause. The “whereas” clause relied on by plaintiff does not constitute a promise by defendants to release plaintiff from any potential claims arising from his employment. Therefore, we find the court’s granting of summary disposition under MCR 2.116(C)(7) was proper.<sup>4</sup>

Plaintiff alleges that defendants waived their rights to enforce the agreement by bringing suit against him in small claims court. It is undisputed that defendant raised the release in the agreement as an affirmative defense in its answer to plaintiff’s complaint. Until rescinded for cause, settlement agreements in Michigan are binding. *Stefanac v Cranbrook Educational Community (After Remand)*, 435 Mich 155, 163; 458 NW2d 56 (1990). A release is valid when fairly and knowingly made. *Brooks v Holmes*, 163 Mich App 143, 145; 413 NW2d 688 (1987). But a release is invalid if the releasor was acting under duress. *Id.* Where, as here, plaintiff alleges he signed the release under duress, plaintiff must prove by a preponderance of the evidence that the release is unfair on its face. *Stefanac, supra* at 165. The trial court found that “[p]laintiff acknowledged that after reviewing the agreement with his attorney, he signed it knowingly, voluntarily, and without any form of duress or coercion.” Since there is no evidence of duress on the record, this argument fails.

Plaintiff next argues that the suit filed in small claims court by defendant constituted malicious prosecution. To establish a prima facie case of malicious prosecution, plaintiff must prove 1) that there was a civil or criminal proceeding instituted or continued against the plaintiff, 2) that the termination of the proceeding was in favor of the accused, 3) that there was an absence of probable cause for the proceeding, and 4) malice or a primary purpose other than that of bringing the offender to justice. MCL 600.2907; *Rivers v Ex-Cell-O Corp*, 100 Mich App 824, 832; 300 NW2d 420 (1980).

Plaintiff argues the trial court erred in granting defendants’ motion for summary disposition regarding his malicious prosecution claim based on governmental immunity. MCL 691.1407(2) provides that an officer of a governmental agency is immune from tort liability for injuries caused while the officer is “acting within the scope of his or her authority” and is “engaged in the exercise or discharge of a governmental function.” A governmental function has been defined as “an activity expressly or impliedly mandated or authorized by the constitution, statute, or other provision of law.” *Payton v Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995). Where that activity is reasonably related to the operation of the township, claims of

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(...continued)

THEREFORE, the parties mutually agree to enter into this Retirement and Release Agreement (the ‘Agreement’), and agree as follows:

<sup>4</sup> Counsel’s assertion at argument before this Court that the township attorney who negotiated and apparently drafted the retirement and release agreement shared plaintiff’s understanding that the agreement was to constitute a mutual release of claims arising out of plaintiff’s employment was not made or supported below.

malicious prosecution against a municipality cannot be sustained under governmental immunity. *Id.* at 392-393. Kimball Township was utilizing the legal system, small claims court, to redress an unpaid bill by plaintiff. We find this activity reasonably related to the operation of the township and therefore not a basis for a malicious prosecution claim. The trial court properly granted defendants' summary disposition motion.

Because we conclude that defendant did not breach the retirement and release agreement, and therefore plaintiff's claims of waiver must fail and the release was effective to bar all claims released, we need not address whether plaintiff was obliged to tender back his severance benefits in order to maintain this action.

Plaintiff finally claims the trial court erred in granting the summary disposition motion because there was a genuine issue of fact relating to whether plaintiff received his back pay and vacation pay as evidenced by the conflicting statements in his complaint and defendants' answer. A trial court's grant of summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record in the same manner as the trial court to determine whether defendant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Review is limited to the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted to the trial court and any reasonable doubt should be found in favor of the opposing party. *Id.*

A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Spiek, supra* at 337. Plaintiffs have the burden of providing evidence that a genuine issue of disputed fact exists and that the disputed factual issue is material to the dispositive legal claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Plaintiffs' only argument in support of the disputed back pay and vacation pay rests on the allegation in his complaint.

A nonmovant must set forth specific facts showing that there is a genuine issue for trial and may not rest on mere allegations in the pleadings. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A nonmovant must go beyond the pleadings to establish specific facts in support of a genuine issue of material fact. *Id.* If the nonmovant fails to present any evidence in support of a genuine issue of material fact, the motion for summary disposition is properly granted. *Id.* at 363. Defendant supported its motion for summary disposition with an affidavit attesting that plaintiff was paid for all his vacation and back pay. Plaintiff had the burden to submit contrary evidence to show that a genuine issue of material fact existed. *Smith, supra* at 455. Plaintiff failed to do so. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Helene N. White  
/s/ Pat M. Donofrio